

1                   BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
2                   STATE OF WASHINGTON

3           WASHINGTON WRECKING COMPANY,           )

4                                   Appellant,           )

5                                   v.           )

6           OLYMPIC AIR POLLUTION CONTROL           )  
7           AUTHORITY,           )

                                  Respondent.           )

PCHB No. 89-129

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

9           This matter came on for hearing before the Pollution Control  
10          Hearings Board, William A. Harrison, Administrative Appeals Judge,  
11          presiding. Board Members Judith A. Bendor, Chair, Wick Dufford and  
12          Harold S. Zimmerman have considered the record.

13          The matter is an appeal from a \$1,000 civil penalty assessed for  
14          alleged violation of respondent's Section 9.01 relating to outdoor  
15          fires.

16          Appearances were as follows:

- 17          1. Joseph C. Anderson, Owner, for Washington Wrecking Company.  
18          2. Fred Gentry, Attorney at Law, for OAPCA.

1 The hearing was conducted at Lacey, Washington on November 2,  
2 1989.

3 Gene Barker and Associates provided court reporting services.

4 Witnesses were sworn and testified. Exhibits were examined.  
5 From the evidence presented the Pollution Control Hearings Board makes  
6 these

7 FINDINGS OF FACT

8 I

9 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
10 a certified copy of its Regulation I, containing respondent's  
11 regulations. We take judicial notice of the Regulation.

12 II

13 On August 24, 1989, appellant Washington Wrecking Company was  
14 engaged in the demolition of an elementary school in the Olympia  
15 School District.

16 III

17 Appellant obtained an Open Burning Permit to dispose of certain  
18 materials which, by the terms of the permit, were not to include  
19 plastics nor other substances emitting dense smoke or obnoxious odor.

20 IV

21 Notwithstanding the terms of the permit, appellant's employees  
22 hauled general demolition waste from the school site to a quarry in  
23 Tumwater. These were set ablaze and contained light fixtures with  
24

1 wiring, plastic hose, wire and conduit and other materials which  
2 emitted dense black smoke and obnoxious odor.

3 V

4 Acting upon citizen complaint, the respondent and the Tumwater  
5 Fire Department visited the site. They found the situation as  
6 described above, and found two piles of demolition waste contrary to  
7 the permit requirement for only one pile. The piles were 20'x 30' and  
8 20'x 20' in extent and several feet high. The fire was extinguished  
9 at the request of the Fire Department.

10 VI

11 Appellant later received a \$1,000 civil penalty notice specifying  
12 violation of Section 9.01 of respondent's regulations relating to  
13 outdoor fire.

14 VII

15 Appellant was instrumental in a prior similar incident in  
16 connection with a school demolition in Elma in 1989. A \$250 civil  
17 penalty was assessed against the general contractors which had engaged  
18 appellant.

19 VIII

20 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
21 adopted as such. From these Findings of Facts, the Board makes these

22 CONCLUSIONS OF LAW

23 I

24 Section 9.01 of respondent's regulations provides, in pertinent  
25

26 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

27 PCHB No. 89-129

(3)

1 part:

2 (B) Open burning other than the above exceptions may  
3 be conducted only by permit from the Control Officer or  
4 his duly designated agent. Such permits shall be  
5 issued when the Control Officer, or his duly designated  
6 agent, is satisfied that:

7 1) No practical alternate method is available for  
8 the disposal of the material to be burned. Due  
9 consideration shall be given to economic factors  
10 and the location at which the material is to be  
11 burned.

12 2) . . .

13 3) . . .

14 4) . . .

15 5) No material containing asphalt, petroleum  
16 products, rubber products, plastic or any substance  
17 which normally emits dense smoke or obnoxious odors  
18 will be burned.

## 19 II

20 The essence of this case is that OAPCA made the economic judgment  
21 called for by Section 9.01(B)(1) of their regulations in granting a  
22 permit to dispose of materials which burn clean. But, OAPCA did not  
23 authorize, nor could it authorize, the burning of plastics and similar  
24 materials which emit dense smoke and obnoxious odors. RCW 70.94.775.  
25 Appellant, when given the inch, took the mile.

## 26 III

27 The purpose of civil penalties is to encourage compliance. The  
penalty of \$1,000 is more than OAPCA might have imposed in other  
circumstances. However, in this instance appellant had been  
instrumental in a prior similar incident. The amount is also

1 necessary to prevent the commercial advantage that could otherwise  
2 occur by circumventing land fill fees in exchange for a minor burning  
3 penalty. The appellant is a knowledgeable commercial operator engaged  
4 in large scale building demolition. The amount of penalty is  
5 justified.

6 IV

7 After the owner of Washington Wrecking Company viewed the evidence  
8 at the hearing for the first time, he appeared willing to conduct his  
9 future business in compliance with air pollution laws. An employee  
10 orientation program on that subject would aid in achieving that  
11 compliance.

12 V

13 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
14 adopted as such. From these Conclusions of Law, the Board enters this  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ORDER

The \$1,000 civil penalty and violation is affirmed.

DONE this 28<sup>th</sup> day of December, 1989.

POLLUTION CONTROL HEARINGS BOARD

Judith A. Bendor  
JUDITH A. BENDOR, Chair

Wick Dufford  
WICK DUFFORD, Member

Harold S. Zimmerman  
HAROLD S. ZIMMERMAN, Member

William A. Harrison  
WILLIAM A. HARRISON  
Administrative Appeals Judge